



Senate

General Assembly

File No. 156

January Session, 2011

Substitute Senate Bill No. 365

Senate, March 23, 2011

The Committee on Human Services reported through SEN. MUSTO of the 22nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING INVESTIGATIONS BY PROTECTIVE SERVICES FOR THE ELDERLY.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (d) of section 17b-451 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2011*):

4 (d) [Any] (1) Subject to subdivision (2) of this subsection, any person
5 who makes any report pursuant to sections 17b-450 to 17b-461,
6 inclusive, as amended by this act, or who testifies in any
7 administrative or judicial proceeding arising from such report shall be
8 immune from any civil or criminal liability on account of such report
9 or testimony, except for liability for perjury. [, unless such person acted
10 in bad faith or with malicious purpose.]

11 (2) Any person who makes any report pursuant to sections 17b-450
12 to 17b-461, inclusive, as amended by this act, is guilty of making a
13 fraudulent or malicious report or providing false testimony when such

14 person (A) wilfully makes a fraudulent or malicious report to the
15 commissioner pursuant to the provisions of this section, (B) conspires
16 with another person to make or cause to be made such report, or (C)
17 wilfully testifies falsely in any administrative or judicial proceeding
18 arising from such report as to the abuse, neglect, exploitation or
19 abandonment of, or need of protective services for, an elderly person.
20 Making a fraudulent or malicious report or providing false testimony
21 is a class A misdemeanor.

22 Sec. 2. Subsection (a) of section 17b-452 of the general statutes is
23 repealed and the following is substituted in lieu thereof (*Effective*
24 *October 1, 2011*):

25 (a) The commissioner upon receiving a report that an elderly person
26 allegedly is being, or has been, abused, neglected, exploited or
27 abandoned, or is in need of protective services shall investigate the
28 report to determine the situation relative to the condition of the elderly
29 person and what action and services, if any, are required. The
30 investigation shall include (1) a visit to the named elderly person, (2)
31 consultation with those individuals having knowledge of the facts of
32 the particular case, and (3) an interview with the elderly person alone
33 unless (A) the elderly person refuses to consent to such interview, (B) a
34 physician provides a written letter stating that in the opinion of the
35 physician an interview with the elderly person alone is medically
36 contraindicated, or (C) the commissioner determines that such
37 interview is not in the best interests of the elderly person. Upon
38 request of the elderly person, the commissioner shall conduct such
39 interview in the presence of the elderly person's counsel. If the
40 commissioner determines that a caretaker is interfering with the
41 commissioner's ability to conduct an interview alone with the elderly
42 person, the commissioner may bring an action in the Superior Court or
43 Probate Court seeking an order enjoining such caretaker from
44 interfering with the commissioner's ability to conduct an interview
45 alone with the elderly person. In investigating a report under this
46 subsection, the commissioner may subpoena witnesses, take testimony
47 under oath and compel the production of any necessary and relevant

48 documents necessary to investigate the allegations of abuse, neglect or
49 abandonment. The commissioner may request the Attorney General to
50 petition the Superior Court for such order as may be appropriate to
51 enforce the provisions of this section. Upon completion of the
52 investigation, written findings shall be prepared which shall include
53 recommended action and a determination of whether protective
54 services are needed. The person filing the report shall be notified of the
55 findings, upon request.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2011	17b-451(d)
Sec. 2	October 1, 2011	17b-452(a)

AGE *Joint Favorable Subst. C/R* HS

HS *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 12 \$	FY 13 \$
Judicial Dept.	GF - Revenue Gain	Less than \$10,000	Less than \$10,000

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill makes it a class A misdemeanor for a person to report elder abuse fraudulently or maliciously, which will result in a potential revenue gain of less than \$10,000 to the General Fund. The estimate assumes that the establishment of a class A misdemeanor for this offense will increase the likelihood that an estimated 25 offenders annually would be prosecuted and receive harsher penalties than under current law.¹

It is anticipated that the number of additional offenders placed on probation would be less than 25, and would not result in additional resources being required by the Judicial Department.

The Out Years

The annualized ongoing revenue identified above would remain constant into the future since fine amounts are set by statute.

Sources: Judicial Quarterly Reports

¹ In 2010, zero convictions were made for this offense, as it was not specified in statute as a class A misdemeanor.

OLR Bill Analysis**sSB 365*****AN ACT CONCERNING INVESTIGATIONS BY PROTECTIVE SERVICES FOR THE ELDERLY.*****SUMMARY:**

This bill makes it a class A misdemeanor, punishable by imprisonment for up to one year, a fine of up to \$2,000, or both, to make a fraudulent or malicious report or provide fraudulent testimony in any elder abuse report to, or investigation by, the Department of Social Services (DSS) commissioner.

The bill expands the circumstances under which the DSS commissioner may not interview an elderly victim of alleged abuse alone as part of an elder abuse investigation.

The bill eliminates an exception from immunity for bad faith and malicious elder abuse reports, thereby immunizing people who make such reports from civil liability.

EFFECTIVE DATE: October 1, 2011

FALSE AND MALICIOUS REPORTS

Under current law, a person making an elder abuse report or providing testimony in an administrative or judicial proceeding on one can be criminally liable only for acting in bad faith or maliciously. Instead, the bill creates a new class A misdemeanor, punishable by imprisonment for up to one year, a fine of up to \$2,000, or both for making a fraudulent or malicious report or providing false testimony. A person commits this crime if he or she:

1. willfully makes a fraudulent or malicious report to the social services commissioner;

2. conspires to make or cause such a report to be made; or
3. willfully testifies falsely in any administrative or judicial proceeding arising from such report about abuse, neglect, exploitation, or abandonment of, or need of protective services for, an elderly person.

As under current law, a person can still be liable for perjury in reporting or testifying.

MANDATORY INTERVIEW

By law, the DSS commissioner must investigate reports of alleged elder abuse. As part of the investigation, under current law, the commissioner must interview the victim alone unless (1) the victim does not consent or (2) the commissioner determines that interviewing the victim alone is not in the victim's best interests.

The bill also prohibits interviewing the victim alone if a physician provides a written letter stating that, in his or her opinion, an interview with the elderly person alone is medically contraindicated. The bill requires the commissioner to conduct the interview in the presence of the victim's counsel, at the victim's request.

LIABILITY

Under current law, anyone who testifies in any administrative or judicial proceeding arising from an elder abuse report is immune from civil liability because of the report or testimony, except for liability for perjury, unless the person acted in bad faith or maliciously. The bill eliminates the exception from immunity for bad faith and malicious actions, thereby immunizing people who commit such actions in bad faith or for a malicious purpose from civil liability.

COMMITTEE ACTION

Aging Committee

Joint Favorable Substitute Change of Reference
Yea 10 Nay 0 (02/15/2011)

Human Services Committee

Joint Favorable Substitute

Yea 18 Nay 0 (03/10/2011)